

Exhibit 303

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF ALABAMA
3 SOUTHERN DIVISION
4
5 -----)
6 IN RE: BLUE CROSS BLUE SHIELD)
7 ANTITRUST LITIGATION) Master File No.
8 (MDL NO. 2406)) 2:13-CV-20000-RDP
9 -----)

10

11 VIDEOTAPED DEPOSITION OF 30 (b) (1) WITNESS:

12 PAULA TAFFE

13

14 SEPTEMBER 20, 2017

15 10:08 a.m.

16

17

COURT REPORTER:

18

JANICE M. KOCEK, CSR, CLR

19

20

21

22

23

24

1 Q. Are you familiar with the
2 exclusive service area provisions within the
3 licensing agreements?

4 A. Yes, I am familiar with that.

5 Q. Would issues dealing with the
6 exclusive service areas fall within your
7 position as chief brand counsel to enforce or
8 oversee those issues?

9 A. That's a very broad question.

10 Q. It is.

11 A. I can -- I can say that one of the
12 ways that a Plan might fall out of compliance
13 with the license agreements would be some
14 activity that extended outside of its service
15 area, in which case that would -- could
16 implicate the license agreements as well.
17 And I would work with Plans on -- I would
18 work on matters such as those.

19 Q. What is your understanding of what
20 an exclusive service area is as it's defined
21 in the licensing agreement?

22 A. The Blue Plans for the most part
23 have operated in exclusive service areas for
24 decades going back to the early part of the

1 last century. The Plans developed -- the --
2 the -- Blue Cross Blue Shield trademarks have
3 their origins in the early part of the last
4 century where -- well, on the Cross side,
5 began in Dallas, Texas.

6 Q. Yeah, I'm aware of the -- of the
7 history.

8 A. So there's a -- there is a history
9 where Plans had common law rights to the
10 trademarks in their individual communities.
11 And those geographic areas, you know, over
12 the decades, the evolution of time
13 developed -- they developed their exclusive
14 service areas.

15 The license agreements, which you
16 asked me about, state that -- in general,
17 that a Plan's service area is that area which
18 it served -- since there's such a historical
19 basis to the service areas, that it served as
20 of a date I think in June of 1972 or '70 --
21 it's '70-something.

22 Q. '70-something, yeah. I'll -- I'll
23 agree with you on that.

24 A. Yeah.

1 MR. HOLMSTEAD: Okay. We'll go off
2 he record.

3 MR. DAVIS: Short break.

4 THE VIDEOGRAPHER: Off the record.
5 The time's 11:01 a.m.

6 (Whereupon, a recess was taken
7 from 11:01 a.m. to 11:21 a.m.)

8 THE VIDEOGRAPHER: On the record.
9 The time is 11:21 a.m.

10 BY MR. DAVIS:

11 Q. Before the break we were talking
12 about exclusive service areas. Do each of
13 the Blue Plans have a set geographic service
14 area, as far as you know, with the exception
15 of the states that have overlapping service
16 areas?

17 MR. HOLMSTEAD: Object to the form.

18 THE WITNESS: Each Plan has a
19 service area in which it's licensed to
20 use the Blue Cross and/or the Blue Shield
21 marks.

22 BY MR. DAVIS:

23 Q. In your opinion, are exclusive
24 service areas necessary to protect the brand?

1 A. Absolutely, yes.

2 Q. What do you base that opinion on?

3 A. My years of experience at the
4 Association and my knowledge and familiarity
5 with trademark law.

6 Q. Can you give me more detail why
7 you think that exclusive service areas are
8 necessary to protect the brand?

9 A. If two Plans are operating in the
10 same geographic area, it can be harmful to
11 the brands in a number of ways. One of which
12 is consumer confusion; another way is
13 dilution of the trademarks.

14 Q. Anything else?

15 A. Yeah, a third way is a Plan within
16 its service area invests resources in the
17 development of the brand, in the development
18 of provider networks.

19 And, in fact, the fact that a Plan
20 has an exclusive service area is an
21 incentive -- it's also even as a matter of
22 history having -- the history of having
23 long -- long and deep relationships with the
24 providers. And as a matter of incentive that

1 since the plan has the exclusive service
2 area, it's inclined to develop its networks
3 deep, broad, you know, even in the rural
4 areas of a -- for example, of a state. And
5 so it makes for very good provider networks.

6 If other Plans were able to
7 operate in that same service area, the --
8 the -- the Plan would not have the same
9 incentives to invest so many resources. The
10 other Plan would gain advantages, free ride
11 on what another Plan is doing in the service
12 area.

13 Q. Anything else?

14 A. Those three are the top three that
15 come to my mind.

16 Q. Okay. Exclusive service areas
17 restrict a Plan to a specific geographic
18 region. Would you agree with that?

19 MR. HOLMSTEAD: Object to form.

20 THE WITNESS: Exclusive -- the --
21 the service areas are a matter of
22 licensing, that a Plan is licensed to use
23 the brands or one of the brands in a
24 particular geographic area.

1 marks because Plans don't own the Blue marks.

2 Q. What about assignments from Plans
3 to the Association?

4 A. I am aware of -- although this was
5 before my time, I -- I learned about it and
6 I -- and I recall it. The DC Plan had
7 registered the Blue marks outside of the
8 United States. And there was a dispute
9 between the Association and the DC Plan about
10 that. And that dispute was resolved. And
11 the DC Plan assigned its rights in those
12 registrations to the Association.

13 Q. Okay. Well, what about within the
14 United States and the Plans that are
15 currently licensed to use the marks?

16 Prior to being licensed to use the
17 marks, the Plan owned the mark, was using the
18 mark. Do they then give a written assignment
19 back to the Association?

20 MR. HOLMSTEAD: Object to the form.
21 Foundation.

22 Go ahead.

23 THE WITNESS: Well, the history of
24 the Blue system is that the Plans were

1 the original owners of the marks. They
2 had common law rights in the marks in
3 their geographic territories, in their
4 communities, going all the way back to
5 the early part of the last century. And
6 over time there were assignments.

7 On the Blue Cross side, there
8 came a point in time where the Blue Cross
9 Plans assigned their rights in the Blue
10 Cross marks to the American Hospital
11 Association.

12 And then I believe at a later
13 point in time through assignments the
14 marks were then owned by the Blue Cross
15 Association.

16 And then on the Shield side
17 there was a Blue Shield Association that
18 sometime -- over the decade there came a
19 point where the Plans -- the Blue Shield
20 Plans assigned their rights to the Blue
21 Shield marks to the Blue Shield
22 Association, I believe.

23 And then ultimately the Blue
24 Cross Blue Shield Association was formed

1 and became the assignee of all the rights
2 to all the marks and the owner of the
3 marks.

4 BY MS. MCQUILKIN:

5 Q. And all those assignments that you
6 just talked about, they're all documented in
7 written form?

8 A. This is the history of the system.
9 I hadn't ever seen the documents.

10 Q. You've never seen the assignment
11 documents?

12 A. No.

13 Q. Do you know if they're kept
14 anywhere in the Association?

15 A. I don't know.

16 Q. You mentioned something about
17 implicit assignment. What did you mean by
18 that?

19 A. I don't recall saying that word.

20 Q. I thought you did. Would you
21 agree with me that assignments need to be
22 documented in writing?

23 MR. HOLMSTEAD: Object to the form.

24 Calls for a legal conclusion.